



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0633]

RIN 1625-AA00

Safety Zone; Cocoa Beach Air Show, Atlantic Ocean, Cocoa Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Ocean located east of Cocoa Beach, Florida during the Cocoa Beach Air Show. The Cocoa Beach Air Show will include aircraft engaging in aerobatic maneuvers. The event is scheduled to take place on Saturday, September 22, 2012, and Sunday, September 23, 2012. The temporary safety zone is necessary for the safety of air show participants, participant aircraft, spectators, and the general public during the event. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Jacksonville or a designated representative.

DATES: This rule is effective from 10:00 a.m. on September 22, 2012 through 5:30 p.m. on September 23, 2012. This rule will be enforced from 10:00 a.m. to 5:30 p.m. on September 22, 2012, and from 10:00 a.m. to 5:30 p.m. on September 23, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0633]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Robert S. Butts, Sector Jacksonville Prevention Department, Coast Guard; telephone 904-564-7563, e-mail [Robert.S.Butts@uscg.mil](mailto:Robert.S.Butts@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS                      Department of Homeland Security

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the event with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to air show participants, participant aircraft, spectators, and the general public.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L.

107-295, 116 Stat. 2064; Department of Homeland Security  
Delegation No. 0170.1.

The purpose of the rule is to protect air show participants, participant aircraft, spectators, and the general public from the hazards associated with aircraft performing low-flying aerobatic maneuvers, and the gathering of large numbers of spectator craft over navigable waters of the United States.

#### C. Discussion of the Final Rule

On Saturday, September 22, 2012, and Sunday, September 23, 2012, the Brevard Air, Sea and Space foundation, is hosting the Cocoa Beach Air Show. The Cocoa Beach Air Show will include approximately 20 aircraft engaging in aerobatic maneuvers over the Atlantic Ocean east of Cocoa Beach, Florida. It is expected that 50 spectator vessels will be present in the area during the event. The high speed at which participant aircraft will be travelling and the maneuvers they will be performing pose a safety hazard to air show participants, participant aircraft, spectators, and the general public.

The safety zone encompasses certain navigable waters of the Atlantic Ocean in the vicinity of Cocoa Beach, Florida. The safety zone will be enforced from 10:00 a.m. until 5:30 p.m. on Saturday, September 22, 2012, and from 10:00 a.m. until 5:30 p.m. on Sunday, September 23, 2012. Persons and vessels are prohibited from entering, transiting through, anchoring in, or

remaining within the safety zone unless authorized by the Captain of the Port Jacksonville or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Jacksonville by telephone at 904-564-7511, or a designated representative via VHF radio on channel 16, to request authorization. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) the safety zone will be enforced for less than a total of 23 hours; (2) although

persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor

in, or remain within that portion of the Atlantic Ocean encompassed within the safety zone from 10:00 a.m. until 5:30 p.m. on September 22, 2012 and September 23, 2012. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast

Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act



addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone that will be enforced for less than a total of 23 hours during the specified operating hours of the event. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the

Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-0633 to read as follows:

§ 165.T07-0633 Safety Zone; Cocoa Beach Air Show, Atlantic Ocean, Cocoa Beach, FL.

(a) Regulated Area. The following regulated area is a safety zone. All waters of the Atlantic Ocean located east of Cocoa Beach, Florida encompassed within an imaginary line

connecting the following points: starting at Point 1 in position 28°20.654'N, 80°35.648'W; thence South to Point 2 in position 28°19.658'N, 80°35.736'W; thence West to Point 3 in position 28°19.701'N, 80°36.293'W; thence North to Point 4 in position 28°20.692'N, 80°36.205'W; thence east back to origin.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at 904-564-7511, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Jacksonville or a designated

representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Effective Date and Enforcement Periods. This rule is effective from 10:00 a.m. on September 22, 2012 through 5:30 p.m. on September 23, 2012. This rule will be enforced daily from 10:00 a.m. until 5:30 p.m. on September 22, 2012, and September 23, 2012.

Dated: July 26, 2012

R.E. HOLMES

Commander, U.S. Coast Guard

Acting Captain of the Port Jacksonville

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Date: 08/20/2012]